

MINUTES OF THE JOINT EXECUTIVE APPROPRIATIONS COMMITTEE

November 18, 2008 at 1:00 p.m.

Room C445, State Capitol, State Capitol Complex

Members Present: Sen. Lyle W. Hillyard, Co-Chair
Rep. Ron Bigelow, Co-Chair
Sen. Peter C. Knudson, Vice Chair
Rep. Rebecca D. Lockhart, Vice Chair
Sen. Curtis S. Bramble
Rep. Greg J. Curtis, Speaker
Sen. Gene Davis
Rep. Brad L. Dee
Sen. Mike Dmitrich
Rep. Dan R. Eastman
Sen. Brent H. Goodfellow
Rep. Brad King
Rep. David Litvack
Rep. Carol Spackman Moss
Rep. Gordon E. Snow
Sen. John L. Valentine, President

Members Excused: Sen. Patricia W. Jones
Sen. Sheldon L. Killpack
Rep. David Clark
Rep. Phil Riesen

Staff Present: Jonathan Ball, Director, LFA
Steven Allred, Deputy Director, LFA
Greta Rodebush, Legislative Secretary

Speakers Present: Tenielle Young, Governor's Office of Planning and Budget
Connie Steffen, LRGC
Bryant Howe, LRGC
Rep. Brad L. Dee
Allison Nicholson, LRGC
Mark Andrews, LRGC
Rich Amon, LFA
Stephen Jardine, LFA
William A. Sederburg, Commissioner of Higher Education
Dr. Gary L. Carlston, Utah State University
Jeff Herr, Utah Virtual Academy
Jonathan Ball, LFA

Note: A list of visitors, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Call to Order - Approval of Minutes

Committee Co-chair Bigelow called the meeting to order at 1:30 p.m. He indicated that no motions would be taken until there was a quorum in the Senate.

2. Federal Funds/Non-Federal Grants Report

Federal Funds Report

Tenielle Young, Governor's Office of Planning and Budget, presented the Federal Funds Report through October 31, 2008. There were no new grants and five reapplications of existing grants requiring legislative action. Ms. Young noted that no new grants and no reapplications of existing grants had been approved by the Governor's Office.

Non-Federal Grants Report

Ms. Young presented the Non-Federal Grants Report through October 31, 2008. There were two new grants and no reapplications of existing grants requiring legislative action. In addition, there were two new grants and no reapplications of existing grants approved by the Governor's Office.

Co-chair Bigelow deferred voting until there was a quorum of senators.

3. Interim Committee and Task Force Progress Reports

- a. ***Education Interim Committee Study of Performance Pay*** - Connie Steffen, Policy Analyst, LRGC, reported that the Education Interim Committee has met to study performance pay for teachers. The Committee has held three additional meetings and will meet on November 19, 2008 as well.

During these meetings, the Education Interim Committee received testimony and presentations from numerous experts skilled in designing performance pay programs for teachers and measuring student achievement outcomes. The committee also reviewed the one-time performance pay plans of the school districts and charter schools that were funded using non-lapsing funds for the 2008-09 school year.

Within the next two days, the Education Interim Committee will review proposed legislation that creates a two-year pilot program to develop and implement performance-based compensation plans. This voluntary grant program is open to elementary schools. In the first year, a school will develop, administer, and evaluate performance measures. In the second year, the school will administer those performance measures and provide compensation for teachers. The bill is expected to have a modest fiscal note in the first year as monies will be expended only for development of the performance pay plans, and not for compensation.

Co-chair Bigelow relinquished the chair to Co-chair Hillyard.

- b. ***Revenue and Taxation Interim Committee*** - Bryant Howe, Policy Analyst, LRGC, reported that the Revenue and Taxation Interim Committee has held four of the five additional meetings authorized by the Legislative Management Committee. He indicated that during the interim, 85-90 percent of committee discussion focused on the state's property tax system.

Highlights on the major presentations and testimony for those meetings are listed in the handout, "Selected Highlights: 2008 Study of Utah's Property Tax System," distributed to committee members.

Mr. Howe stated that no final broad-based sweeping recommendations had been adopted by the committee, but a number of recommendations are under review and are attached to the report.

Mr. Howe stated that the Committee has approved two bills: "Certified Tax Rate Amendments" and "Personal Property Tax Amendments." The Committee is also considering a number of bills dealing with the authority of school districts to impose various property tax levies.

The Revenue and Taxation Interim Committee will be meeting on November 19, 2008 and December 16, 2008.

Rep. Moss asked if draft legislation was being prepared to extend the circuit breaker tax relief program.

Mr. Howe responded that no legislation has been drafted. He explained that a request had been made to determine what the cost would be if the age requirement of 65 years or older were eliminated from the circuit breaker tax relief program and extended to all low income families. The Office of the Legislative Fiscal Analyst will be reporting on those costs at the November 19, 2008 meeting.

Rep. Moss inquired about the proposal to defer increases in property taxes for seniors. Mr. Howe stated that no legislation had been drafted. The proposal was submitted by the Washington County Assessor and a brief description of the proposal is found in the handout as well. Mr. Howe clarified that the proposal will limit significant annual increases in assessed values to all property owners.

Sen. Davis asked for a clarification on constitutional tax abatements. Mr. Howe explained that the Constitution states that the Legislature may abate the taxes of the poor regardless of age. While the circuit breaker tax relief program is directed toward heads of households over the age of 65, there are other forms of property tax relief for the poor and indigent such as abatements and deferrals at the local level.

Co-chair Hillyard informed the committee that upon conclusion of the reports, a vote would be taken on the Federal Funds/Non-Federal Grants Report.

- c. ***Immigration Interim Committee*** - Rep. Brad Dee reported that meetings have been held in Logan, Park City, Richfield, St. George, as well as the State Capitol for the expressed purpose of examining S.B. 181, *Illegal Immigration*, with a delayed implementation date of July 1, 2009. The next meeting will be held at the State Capitol on December 3, 2008.

The committee has heard testimony from various public and private entities. Rep. Dee stated that at this point in time, no model legislation has come forth. He noted that the committee is in support of S.B. 181, *Illegal Immigration*, but does have concern regarding some definitions that the committee may revise and present at the first of the year.

Rep. Dee indicated that the committee has looked at E-Verify, a voluntary, web-based system that allows businesses to verify the citizenship status of new employees.

The committee has heard testimony from U.S. Attorney, Brett L. Tolman, concerning the immigration effects on the state of Utah. They will continue to work with that office.

Rep. Dee stated that he has met with Immigration and Customs Enforcement (ICE) officials several times and invited them to testify at a meeting. ICE has requested that the meeting be closed. Rep. Dee indicated that the committee is not willing to do this at this particular time.

The committee is also looking at the Immigration and Customs Enforcement's program that trains local law enforcement officials throughout the state to aid in illegal immigration efforts.

Rep. Litvack asked about the necessary appropriations to various state agencies to implement the provisions of S.B. 181, *Illegal Immigration*. Rep. Dee stated the revised definitions will further clarify contractual relationships for the state and those entities doing business with the state. He does not think that there will be major fiscal impacts in 2010 and 2011. There will be a fiscal note on any changes that do occur.

Rep. Litvack inquired about appropriations to the Departments of Health and Human Services to cover immigration checks in establishing eligibility for public programs. Rep. Dee responded that he was not aware of any additional appropriations that would be required. He mentioned that the committee had looked at whether a couple of divisions, in particular, the Driver License Division, will have funding to cover those types of expenses. The committee will be looking at those agencies as they tighten up definitions.

- d. ***Higher Education and Applied Technology Governance Committee*** - Allison Nicholson, Policy Analyst, LRGC, reported that the Higher Education and Applied Technology Governance Committee had met eight times during the interim focusing primarily on the governance of the Utah College of Applied Technology (UCAT). Two additional informal working group meetings were held which brought back draft legislation.

Ms. Nicholson highlighted general policy changes in the 2009 draft legislation, "Career and Technical Education Amendments." The draft legislation (1) changes the governance structure overseeing UCAT from the State Board of Regents to the UCAT Board of Trustees; (2) requires legislative appropriations for career and technical (CTE) programs at Salt Lake Community College, Snow College, and College of Eastern Utah to be made as separate line items; (3) adjusts the makeup of the three policy-making boards (State Board of Regents, State Office of Education, and the UCAT Board of Trustees) so that each board will have only one board member from each of the other boards, with nonvoting status; and (4) adds members to the UCAT Board of Trustees and authorizes the UCAT Board of Trustees to appoint the UCAT president, approve UCAT programs, and set tuition at UCAT campuses.

Based on conversations with the Office of the Legislative Fiscal Analyst, the Commissioner of Higher Education Office, and representatives of UCAT, Ms. Nicholson indicated that no additional appropriations would be anticipated and the bill will not have a fiscal impact.

- e. ***Health System Reform Task Force*** - Mark Andrews, Policy Analyst, LRGC, reported that the Health System Reform Task Force has met eight times, and along with five input groups, hundreds of hours have been spent in studying a very complex issue. 2008 H.B. 133, Health System Reform, created the Health System Reform Task Force and charged

it with reviewing and making "recommendations on the state's development and implementation of [a] strategic plan for health system reform."

Mr. Andrews reviewed a packet of information with attachments that substantiate the work efforts of the Task Force. The attachments are as follows: (1) H.B. 133, Health System Reform; (2) A Reasoned Approach to Health System Reform and A Pathway to Future Health System Reform; (3) Possible Legislation for the Health System Reform Task Force; (4) Summary of State Government Actions Required by H.B. 133; and (5) An Overview of Health Information Technology Activities in Utah.

Mr. Andrews stated that Rep. Clark estimates that eight to ten bills will come as a result of the Task Force's work. The Task Force will meet on December 16, 2008, at which time draft legislation will be considered.

Upon conclusion of the Interim Committee and Task Force Progress Reports, Co-chair Hillyard entertained motions from Co-chair Bigelow.

MOTION: Co-chair Bigelow moved to approve the Federal Funds/Non-Federal Grants Reports through October 31, 2008. The motion passed unanimously with Pres. Valentine and Sen. Bramble absent for the vote.

MOTION: Co-chair Bigelow moved to approve the revised minutes from October 14, 2008. The motion passed unanimously with Pres. Valentine and Sen. Bramble absent for the vote.

4. Cash Funds and Accounting Protocols

Rich Amon, LFA, explained the three major types of cash funds: petty cash funds, travel advance funds, and cash change funds. In FY 2008, the state had 452 cash funds totaling \$477,000. Each fund had on average \$1,000. The Budgetary Procedures Act requires the Division of Finance and the Governor to oversee the creation of new cash funds.

Mr. Amon stated that cash funds play an important role in state government. The Analyst recommends the following changes:

- *Urge agencies operating petty cash funds consider the use of a purchasing card [P-card] in lieu of cash when practical.*
- *Consider revising the Budgetary Procedures Act to provide for the elimination or review of cash funds.*
- *Consider revising the Budgetary Procedures Act to reflect the current role of the Division of Finance or clarify the role the Governor should play in the process of establishing and eliminating petty cash funds.*

Stephen Jardine, LFA, stated that while most of the accounting practices described in the Budgetary Procedures Act are straightforward and reflect current practice, several sections could use clarification.

The report examined Section 405(4a) - budget allotments, Section 311(3) - allotment of funds to Higher Education, Section 406 - work programs, and Section 406 (8) - approval of all expenditures.

Mr. Jardine noted that the Division of Finance states that the term "allotment," as used in Subsection (4a) of Section 405, is an archaic term that predates the current FINET accounting system. Under the current FINET accounting system, agency budgets are established at the beginning of the fiscal year with funds available for expenditure throughout the year. The Analyst recommends:

- *Replace the phrase "allotment or allotments in excess of regular monthly allotments" in Subsection (4a) of Section 405 of the Budgetary Procedures Act with the phrase "of funds."*

Section 311 of the Budgetary Procedures Act concerns the establishment and operation of cash funds; however, Subsection (3) concerns advancing funds to higher education. The Analyst recommends:

- *Consider rewriting Subsection (3) of Section 311 deleting verbiage referring to cash funds and moving Subsection (3) to a new Section.*

State agencies may alter or change the schedule of expenditures from one purpose or function to another through the use of work programs. The term "work program" is not clearly defined in statute. In addition, the Governor does not formally sign off on work program budgets or work program modifications. The Analyst recommends:

- *Define the term "work program" and clarify the role the Governor plays in work program adjustments.*

As per Subsection (8)(b) of Section 406, the Director of Finance is required to approve all expenditures for all state agencies. The Division of Finance currently conducts statistical sampling to examine and approve or disapprove expenditures. The Analyst recommends:

- *Consider deleting Subsection (8)(b) or placing certain thresholds on the dollar amount of the requisitions that the Director shall approve and certify.*

5. Report on CEU/USU Collaboration

Spencer Pratt, LFA, offered introductory remarks on the CEU/USU Collaboration Study. The 2008 Legislature directed the task force on higher education governance and the State Board of Regents to study ways for greater collaboration and cooperation between the College of Eastern Utah and Utah State University to increase educational opportunities in eastern Utah. The study was to include ways of protecting the traditional community college role including access to career and technical education currently provided by CEU.

Commissioner William A. Sederburg addressed the committee. He recognized Interim Commissioner of Higher Education, David Buhler; and study consultants, Dr. Gary L. Carlston, USU; Dr. Steven O. Laing, USU; and Dr. David J. Sperry, University of Utah. Also in attendance, was President Stan L. Albrecht, USU; Interim President Mike King, College of Eastern Utah; and Interim President Liz Hitch, Utah Valley University.

Dr. Gary L. Carlston, Utah State University, presented the report, "Utah State University and the College of Eastern Utah Partnership and Alliance, A Legislative Required Study." Study consultants worked with individuals at the two institutions and came up with a list of important issues to be considered in developing a possible model for merging, or enhancing partnerships between CEU and USU. Four study teams were created to investigate the following issues: (1) Mission, Governance, and Community; (2) Finance; (3) Faculty and Employee; and (4) Educational Program and Students. The final phase of the study was to include public input and comment.

Dr. Carlston stated that as the study teams began to examine the issues, it became apparent that representatives from CEU expressed concern about the study and the rationale for singling out CEU for a possible merger with USU. After receiving reports from study team participants, the presidents of CEU and USU recommended that future discussions be placed on hold. Given this development, the study consultants recommended three options. Commissioner Sederburg communicated those options to President Albrecht and Interim President King. Both presidents felt that Option 3 to conclude the study at its present status would be appropriate.

Dr. Carlston commented that the study consultants were invited to offer observations regarding the working relationship between Utah State University and the College of Eastern Utah. While the design of the study did not produce the product they had hoped for, a great deal was learned. He observed that the identity of a community college plays an important role in the community, particularly in less populated areas. Clearly, there was a division of thought on the merger or enhancing partnerships or even what the future should be for CEU.

Commissioner Sederburg stated that the State Board of Regents will not be recommending a merger of the two schools but rather calling for enhanced collaboration to look for some administrative efficiencies given the current economic climate.

Sen. Dmitrich addressed the committee. He stated that he had introduced this study request last session, in hopes of impacting the declining enrollment at CEU and helping the business community. Sen. Dmitrich explained that he had the best interests of the students in mind. Involvement with USU would help capture some research dollars to help southeastern Utah develop natural resources. He also envisioned enhancing the curriculum, where every degree offered at USU would be accessible to the students at CEU. Sen. Dmitrich stated that he still thinks that this should be pursued in the future.

Dr. Carlston clarified that while both he and Dr. Laing are affiliated with Utah State University, he felt that the facilitated study was conducted without bias. He asked that Dr. Sperry be excused in that he was out of town. He also expressed his appreciation to Commissioner Sederburg and Interim Commissioner Dave Buhler for their guidance and support.

Sen. Hillyard expressed his appreciation to Dr. Carlston.

6. Report on Utah Virtual Academy Charter School

Todd Hauber, Associate Superintendent for Business Services, Utah State Office of Education, presented the report. In 2006, the Utah State Office of Education (USOE) approved a charter for Utah Virtual Academy (UTVA), Utah's first all-virtual public school. During the 2008 General Session, S.B. 2 mandated the USOE to conduct an audit of the funds allocated to the Utah Virtual Academy through the Minimum School Program (MSP), including expenditures of Weighted Pupil Unit (WPU) and Local

Replacement Funding (LRF). Mr. Hauber pointed out that Utah Virtual Academy started this year with only a month and a half of actual expenditures available for auditing purposes. Consequently, USOE has opted to use the committed budget for FY 2009 for the analysis.

Mr. Hauber reviewed Table 1, Major Budgeted Expenditures by Category - FY 2009 for UTVA, two other traditional brick-and-mortar charter schools, and the Utah Electronic High School. The data shows a distinctive difference on how the UTVA has financed itself as compared to the other schools. The analysis revealed UTVA reported many of their budgeted expenditures in several key areas inconsistent with National Center for Education (NCES) accounting guidelines. Mr. Hauber indicated that UTVA has met with USOE's Finance and Statistics staff member to learn USOE's reporting requirements to ensure future compliance.

Mr. Hauber stated that while UTVA has re-submitted its budget data, the disparity between the schools' budgeted expenditures remains about the same. The "Salary and Benefits" classification shows a significantly lower percentage than the traditional charter school because there is a higher student to teacher ratio, teachers providing instruction for multiple grade levels, and more parent involvement. "Supplies and Curriculum" is significantly higher because curriculum and curriculum-related expenditures for virtual education programs are more expensive. Included in these expenses are the management and contract services of K12, Inc., fully developed curriculum using the latest software and technology advances, teacher development and training, dissemination of materials, computers, and high-speed internet. The "Facility Related" category is lower, covering the expenses of one main office with servers for K12, Inc.

Mr. Hauber highlighted a number of areas recommended for a future study that includes the disclosure of actual charges paid by UTVA for services and materials provided by K12, Inc.; ensure that UTVA's board is directing K12, Inc.; and careful monitoring of students' progress and test scores.

Findings show that the total expenses of operating a quality and effective virtual charter school versus a more traditional brick-and-mortar charter school are essentially the same, although the expenses are shifted to different areas. The report points out that quality virtual schools were never intended to cost less to run, but were intended to reach out to those student populations not currently being served by more traditional schools.

Rep. Moss asked about the current enrollment of full time students at UTVA. Mr. Hauber pointed out that UTVA is approved for 500 students in 2008-2009. Jeff Herr, Head of School, UTVA, stated that there are 482 full time students currently enrolled in UTVA. He expects enrollment to reach 500 students by the end of the month.

Sen. Goodfellow inquired about the tracking of funds when a student leaves the public school system, enrolls in a charter school, and then returns to the public school during the school year. Mr. Herr stated that the funds do not follow the student, and thus remain with the charter school.

Rep. Litvack asked about the demographics of students attending UTVA. Mr. Herr stated that the demographics of those opting to attend a virtual charter school are about the same as those attending a traditional brick-and-mortar charter school. Forty two percent of the students come from school districts that offer virtual learning environments and use the K12 virtual curriculum to enhance classroom instruction. When UTVA opened up, students were able to make an easy transition. UTVA offers virtual curriculum to students statewide through the 12th grade.

Pres. Valentine asked for a profile of a typical student enrolled at UTVA. Mr. Herr stated that one-third of the students are home schooled, and approximately the other two-thirds are students whose parents were looking for another flexible option. He also mentioned that 2-3 percent are student athletes.

President Valentine commented that this would be a good option for students that are home bound due to injury or disease. Mr. Herr stated that this is also a good option for students that struggle in the public school environment.

Sen. Goodfellow inquired about internet access to students in rural areas. Mr. Herr responded that these services are currently available to all students, along with subsidy programs and technological assistance and support.

Rep. Moss asked about testing requirements. Mr. Herr stated that UTVA is held to the same testing standards as any other charter school, including the posting of test scores. Student assessments for placement are conducted at the beginning of the school year as well.

Sen. Davis asked about the drop out rate. Mr. Herr noted that it is too early to make that determination, this being the first year in operation. However, since the beginning of the year 16 percent have dropped out, but those have been replaced with new students. This is lower than the national average.

Sen. Davis inquired further about the funds that follow the replacement students. Mr. Herr stated that while UTVA keeps WPU funding for the students that drop out, WPU monies will not follow any new student that enters UTVA after October 1.

7. Recodification of Budgetary Procedures Act

Jonathan Ball, Director, LFA, stated that during the 2008 Interim, the Office of the Legislative Fiscal Analyst, under the direction of the Executive Appropriations Committee, compiled five reports on issues pertaining to the Budgetary Procedures Act: (1) Fees and Fee Revenue; (2) Restricted Funds; (3) Nonlapsing Balances; (4) Proprietary and Other Funds; and (5) Cash Funds and Accounting Protocols. Recommendations from each of the five reports along with one recommendation from the State Vehicle Report are summarized in the report, "Recommendations for Recodification of the Budgetary Procedures Act."

Mr. Ball indicated that the previously designated subcommittee comprised of the Executive Appropriations Committee Co-chairs, Vice Chairs, Senator Brent Goodfellow, and Rep. Carol Spackman Moss will be meeting to review the recommendations and make suggestions for statutory language that will be prepared by Eric Weeks, Associate General Counsel, Office of Legislative Research and General Counsel. A draft bill will be presented to the committee next month.

8. Other Business

Co-chair Hillyard informed the committee that seven written reports were included in the committee binders for their consideration: (1) Lease-Revenue Bonds Example (Follow-up from October); (2) Information about Federal Grants for Specialty Crops (Follow-up from October); (3) Memorandum about UDOT Projects if Bonding is Delayed (Follow-up from October); (4) 2008 G.S. Fiscal Notes and Building Blocks Slated for Further Review; (5) Assistance or Services to Low-Income Individuals and Families Report (Required by UCA 36-12-13); (6) Elected Officials and Judicial Compensation

Commission Report (Required by UCA 67-8-3); and (7) Amendments to Medicaid Report (Required by UCA 26-18-3).

Co-chair Bigelow pointed out that three of the seven reports were follow-up requests from the October 2008 Executive Appropriations Committee meeting. He encouraged the members to not overlook these reports in that they have excellent budget information that will be helpful for the upcoming session.

Co-chair Hillyard recognized Co-chair Bigelow for a motion.

MOTION: Co-chair Bigelow moved to adjourn. The motion passed unanimously.

Co-chair Hillyard adjourned the meeting at 3:02 p.m.